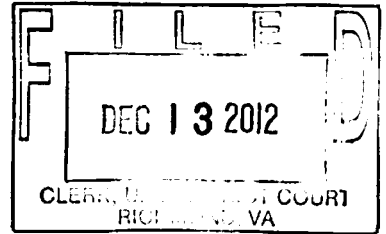


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



UNITED STATES OF AMERICA

v.

Criminal No. 3:08cr185

JAMES STEVEN LESANE

MEMORANDUM OPINION

James Steven Lesane pleaded guilty in this Court to conspiracy to possess with intent to distribute and distribution of 50 grams or more of cocaine base. The matter is before the Court on "DEFENDANT'S SECOND MOTION PURSUANT TO THE FED. R. CRIM. P., RULE 33(a) & (b)(1)" (Docket No. 92) and "DEFENDANT'S MOTION TO SUPPLEMENT THE SECOND FED. R. CRIM. P. RULE 33(a) & (b)(1) MOTION" (Docket No. 95) (collectively "Motions for a New Trial").¹

Federal Rule of Criminal Procedure 33 provides:

Rule 33. New Trial

(a) **Defendant's Motion.** Upon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires. If the case was tried without a jury, the court may take additional testimony and enter a new judgment.

(b) **Time to File.**

(1) **Newly Discovered Evidence.** Any motion for a new trial grounded on newly discovered evidence must be filed within 3 years after the verdict or finding of guilty. If an appeal is pending, the

¹ The Court has corrected the spacing and punctuation in the titles to Lesane's Motions for a New Trial.

court may not grant a motion for a new trial until the appellate court remands the case.

(2) **Other Grounds.** Any motion for a new trial grounded on any reason other than newly discovered evidence must be filed within 14 days after the verdict or finding of guilty.

Fed. R. Crim. P. 33. Lesane does not qualify to proceed under Rule 33 because this rule "applies only to cases in which a [t]rial, either to the court or to a jury, has taken place." United States v. Lambert, 603 F.2d 808, 809 (10th Cir. 1979); accord United States v. Graciani, 61 F.3d 70, 78 (1st Cir. 1995). Accordingly, Lesane's Motions for a New Trial (Docket Nos. 92, 95) will be denied.

Lesane also has filed a motion seeking sanctions against the Government for allegedly failing to file a timely response to his Motions for a New Trial and otherwise engaging in improper conduct.² Because the response of the United States was timely and Lesane fails to demonstrate the United States acted improperly, Lesane's Motion for Sanctions (Docket No. 110) will be denied.

² By Memorandum Order entered on February 24, 2010, the Court directed the United States to respond to Lesane's Motions for a New Trial within sixty (60) days of the date of entry thereof. On Monday, April 26, 2010, the United States filed its timely response. See Fed. R. Crim. P. 45(a)(1)(C) (directing courts to "include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday").

The Clerk is directed to send a copy of the Memorandum Opinion to Lesane and counsel for the United States.

Date: *December 12, 2012*
Richmond, Virginia

/s/ REP

Robert E. Payne
Senior United States District Judge